

Regular Session, 2010

SENATE BILL NO. 67

BY SENATOR MARTINY

EMPLOYMENT. Mandates use of the E-verify system for new employees. (8/15/10)

AN ACT

To enact Part VI-A of Chapter 9 of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:998 through 998.6, relative to the verification of legal status prior to employment of new employees; to provide definitions; to provide for the scope of applicability; to provide for phase-in of compliance; with verification requirements; to provide relative to verification of new hires; to provide relative to third party employers; to provide for penalties for non-compliance; to provide liability protections; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part VI-A of Chapter 9 of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:998 through 998.6, is hereby enacted to read as follows:

**PART VI-A. EMPLOYER VERIFICATION ACT**

**SUBPART A. GENERAL PROVISIONS**

**§998. Short title; findings**

**A. This Part shall be known and may be cited as the "Employer Verification Act."**

**B. The Legislature of Louisiana declares the following findings:**

1           (1) The legislature finds that when illegal immigrants have been living  
2           in this state and encouraged to reside here through the benefit of employment  
3           without verifying immigration status, these practices impede and obstruct the  
4           enforcement of federal immigration law, undermine the security of our borders,  
5           and impermissibly restrict the privileges and immunities of the citizens of  
6           Louisiana.

7           (2) The legislature finds that it is a compelling public interest of this  
8           state to discourage illegal immigration by requiring all employers in Louisiana,  
9           including public employers, to cooperate fully with federal immigration  
10          authorities in the enforcement of federal immigration law.

11          §998.1. Definitions

12           For the purposes of this Part, the following terms shall have the following  
13          meanings unless the context clearly indicates otherwise:

14           (1) "Commission" is the Louisiana Workforce Commission or any  
15          successor agency.

16           (2) "Contractor" is one who meets all of the following criteria:

17           (a) A person with whom a private employer contracts for the physical  
18          performance of services.

19           (b) A person who is not an employee of a private employer for the  
20          purposes of providing the performance of services.

21           (c) A person who is a private employer.

22           (3) "Employee" is any person or entity who is hired to perform work  
23          within the state of Louisiana, to whom a federal form is required to be provided,  
24          and whose income is required to be reported on such federal form.

25           (4) "Employer" is any person or business that is required by federal or  
26          state law to provide a federal form to an individual who performs services for  
27          the person or business in Louisiana and who is required to report income paid  
28          to the individual who performs the services.

29           (5) "Legal alien" is a person who is or was lawfully present in the United

1 States at the time of employment and remains so for the duration of  
2 employment, or a person who is or was permanently residing legally in the  
3 United States at the time of employment and remains so for the duration of  
4 employment.

5 (6) "Private employer" is a person who, for federal taxation purposes,  
6 is required to provide a federal form to an individual who performs services for  
7 the person in Louisiana and who is required to report income paid to the  
8 individual who performs the services and who is not considered a public  
9 employer.

10 (7) "Public employer" is any department, agency, or instrumentality of  
11 the state or a political subdivision of the state.

12 (8) "Status verification system" is the electronic verification of work  
13 authorization program of the Illegal Immigration Reform and Immigration  
14 Responsibility Act of 1996, 8 U.S.C. 1324a, and operated by the United States  
15 Department of Homeland Security, known as the E-Verify Program.

16 (9) "Subcontractor" is a person who contracts directly with the primary  
17 contractor or with another contractor for the performance of a part of the  
18 principal contract.

19 (10) "Third party employer" is a person who provides workers for  
20 another person or business, whether for full-time or part-time hire. This  
21 includes, but is not limited to, leasing companies and contract employers.

22 §998.2. Scope

23 A. This Part applies to all of the following:

24 (1) The hire of a new employee on or after the applicable date of  
25 compliance.

26 (2) A contract executed on or after the applicable date of compliance,  
27 between a private employer and a contractor for the physical performance of  
28 services.

29 (3) A contract executed on or after the applicable date of compliance

1 with a third party employer.

2 (4) A contract executed by a public employer on or after the applicable  
3 date of compliance.

4 B. Compliance with verification requirements.

5 (1) All private employers in Louisiana with more than two hundred fifty  
6 employees shall meet verification requirements not later than January 1, 2011.

7 (2) All public employers in Louisiana shall meet verification  
8 requirements not later than July 1, 2011.

9 (3) All employers in Louisiana shall meet verification requirements not  
10 later than January 1, 2012.

11 SUBPART B. VERIFICATION REQUIREMENTS

12 §998.3. Verification requirements for new hires

13 A. Every employer, both public and private, in the state of Louisiana  
14 shall hire only employees who are legal citizens of the United States or who are  
15 legal aliens.

16 B. Every employer shall comply with the following requirements:

17 (1) All employers shall register with and utilize the status verification  
18 system to verify the federal employment authorization status of all newly hired  
19 employees.

20 (2) No contractor or subcontractor shall hire any employee unless the  
21 contractor or subcontractor registers and participates in the status verification  
22 system to verify the federal work eligibility status of all newly hired employees.

23 (3) No contractor or subcontractor who enters into a contract with a  
24 public employer shall enter into such a contract or subcontract unless the  
25 contractor or subcontractor registers and participates in the status verification  
26 system to verify the federal work eligibility status of all newly hired employees.

27 §998.4. Verification by third party employers

28 A. All third party employers that conduct business in Louisiana shall  
29 register to do business with the Louisiana Workforce Commission before

1 placing employees into the workplace in Louisiana.

2 B. Third party employers shall provide proof of registration and any  
3 participation in the status verification system to any Louisiana employer with  
4 whom they do business.

5 SUBPART C. PENALTIES, LIABILITIES, AND LIABILITY PROTECTIONS

6 §998.5. Penalties and liabilities

7 A. Compliance with this Part shall not exempt the employer, whether  
8 public or private, from regulations and requirements related to any federal laws  
9 or procedures related to employers.

10 B. Employer liability shall be as follows:

11 (1) Any employer violating the provisions of this Part shall be subject  
12 to cancellation of any state or public contract, resulting in ineligibility for any  
13 state or public contract for a period not to exceed three years.

14 (2) Any employer violating the provisions of this Part shall be subject  
15 to the loss of any permit, license, certificate, or other document granted to the  
16 employer by any agency, department, or other government entity for the right  
17 to do business in Louisiana for a period not to exceed one year.

18 (3) Any employer violating the provisions of this Part may be subject to  
19 penalties set forth in both Paragraphs (1) and (2) of this Subsection.

20 C. Any contractor or employer shall be liable for any additional costs  
21 incurred by any agency or entity of the state of Louisiana, or any of its political  
22 subdivisions, because of the cancellation of the contract or loss of any license or  
23 permit to do business in the state.

24 D. Any person or entity penalized under this Section shall have the right  
25 to appeal to the appropriate entity sanctioning the person or to the state district  
26 court of competent jurisdiction.

27 E. The Louisiana Workforce Commission and the attorney general shall  
28 have the authority to seek penalties under this Part and to bring charges for  
29 noncompliance against any employer or employee.

1                    **F. Criminal liability for violation of this Part shall be as follows:**

2                    **(1) It shall be a felony for any person to accept or perform employment**  
3                    **for compensation knowing or in reckless disregard that the person is an**  
4                    **unauthorized alien with respect to employment during the period in which the**  
5                    **unauthorized employment occurred.**

6                    **(2) Upon conviction, a violator shall be subject to imprisonment in the**  
7                    **custody of the state for not less than one year and not more than five years, a**  
8                    **fine of not less than one thousand dollars nor more than ten thousand dollars,**  
9                    **or both.**

10                  **§998.6. Protections from liability**

11                  **There shall be no liability under this Part in the following circumstances:**

12                  **(1) An employer who hires an employee through a state or federal work**  
13                  **program that requires verification of the employee's social security number and**  
14                  **provides verification of the employee's legal presence in the United States in an**  
15                  **employment-authorized immigration status.**

16                  **(2) Any person recommended for employment by the Louisiana**  
17                  **Workforce Commission, if the commission has verified the social security**  
18                  **number and provides for verification of the person's lawful presence in the**  
19                  **United States in an employment-authorized immigration status.**

20                  **(3) Individual homeowners who hire workers on their private property**  
21                  **for noncommercial purposes, unless required by federal law to verify the status**  
22                  **of such a worker.**

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Mary Dozier O'Brien.

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DIGEST

Present law (R.S. 23:991-996) provides relative to the hiring of aliens; however, present law  
does not contain provisions regarding the use of the E-Verify system in hiring new  
employees.

Proposed law provides for the "Employer Verification Act."

Proposed law provides definitions for the following terms:

1. Commission
2. Contractor
3. Employee
4. Employer
5. Legal alien
6. Private employer
7. Public employer
8. Status verification system
9. Subcontractor
10. Third party employer

Proposed law applies to any of these actions after the applicable date of compliance contained in the legislation:

1. The hire of a new employee.
2. A contract executed between a private employer and a contractor for the physical performance of services.
3. A contract with a third party employer.
4. An employment contract executed by a public employer.

Proposed law provides for a phase-in of compliance with the statute, as follows:

1. All employers in Louisiana with more than 250 employees-1/1/2011.
2. All public employers-7/1/2011.
3. All employers in Louisiana-1/1/2012.

Proposed law provides that all employers shall hire only legal citizens of the U.S. or legal aliens.

Proposed law requires all employers to register with and utilize the status verification system known as "E-Verify."

Proposed law provides that all third party employers who do business in Louisiana shall register with the Louisiana Workforce Commission and provide proof of registration with the status verification system, E-Verify.

Proposed law provides that an employer who violates the provisions of this statute shall be subject to the cancellation of any state contracts and ineligibility for any public contracts for a period not more than 3 years, shall be subject to losing any license, permit, certificate, or other document issued by the state for not more than 1 year, or both.

Proposed law provides that any contractor or employer shall be responsible for any additional costs incurred by the state or its political subdivisions for the cancellation of any contract or the revocation of any license, permit, certificate, or other document.

Proposed law provides for appeal of any penalty provided in proposed law.

Proposed law invests the Louisiana Workforce Commission and the attorney with the right to enforce the provisions of proposed law.

Proposed law provides for criminal sanctions for the employee who knowingly or with reckless disregard violates proposed law.

Proposed law provides protections from liability if the prospective new hire has been recommended for work through a state or federal work program, if the prospective new hire has been recommended for work by the Louisiana Workforce Commission, and for homeowners who hire workers for work noncommercial on private property, unless required to verify by federal law.

Effective August 15, 2010.

(Adds R.S. 23:998-998.6)